

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 92M-556
02778

ORIGINAL
FILE

In re Application of)
)
NORMANDY BROADCASTING CORP.)
)
For Renewal of License of)
Station WYLR(FM))
Glens Falls, New York)
)
and)
)
LAWRENCE N. BRANDT)
)
For a Construction Permit)
for a New FM Station on 95.9 MHz)
at Glens Falls, New York)

MM DOCKET NO. 92-6
File No. BRH-910129UR
File No. BPH-910430MB

MEMORANDUM OPINION AND ORDER

Issued: May 12, 1992;

Released: May 13, 1992

1. This is a ruling on a Motion to Modify and Enlarge Issues that was filed by Normandy Broadcasting Corporation ("Normandy") on April 13, 1992. An opposition was filed by Lawrence N. Brandt ("Brandt") on April 21, 1992. The Mass Media Bureau's Opposition to Motion to Modify and Enlarge Issues was filed on April 28, 1992. There has been no Reply pleading filed.

2. Normandy seeks to have the following issues added against Brandt:

- (a) To determine whether Brandt purposely deceived the Commission as to Normandy's certification on its renewal regarding whether it had placed materials in its public file at appropriate times.
- (b) To determine whether Brandt purposely withheld information from the FCC and Normandy in his application for his CP on 95.9 MHz in Glenn Falls.

3. This case was set for hearing under Hearing Designation Order DA-92-11, released January 21, 1992, and published on January 24, 1992. See 57 Fed. Reg. 2911. Normandy filed its Motion on April 13, 1992, alleging that on February 24, 1992, Brandt had misled the Commission in his motion to enlarge the issues against Normandy. Specifically, Brandt alleges that Normandy had falsely certified in its renewal application that it had complied with Section 73.3526 of the Commission's Rules. In fact, Normandy had not so certified. Normandy alleges in a second count that Brandt intentionally misled the Commission when he failed to disclose in his application on April 30, 1991, that at one time he had several applications on file with the Commission.

4. The Commission's rules provide in pertinent part that such motions must be filed within 30 days after the designation order has been published or state sufficient reason why it was not possible to file the motion within the prescribed period. 47 C.F.R §1.229(b). Motions that are filed based on newly discovered facts must be filed within fifteen days of the discovery of the facts. Id.

5. The facts with regard to Brandt's erroneous false certification charge were known on or about February 24, 1992, which required a motion to be filed by Normandy on or about March 10, 1992. Normandy failed to meet that date. The facts with regard to Brandt's alleged failure to disclose his applications were facts that should have been known to Normandy prior to issuance of the HDO because the alleged nonfeasance occurred in connection with the application that Brandt had filed on April 30, 1991. Normandy was required to seek an issue on those allegations by February 24, 1992 (30 days after publication of the HDO) and Normandy also failed to meet that date. There has not been a showing of good cause for the failure to file on time as is required. 47 C.F.R. §1.229 (b).

6. There is a separate provision for adding late-filed issues where the motion raises a question of probable decisional significance which is of such public interest importance as to warrant consideration in spite of the untimeliness. 47 C.F.R. §1.229 (e). But while Brandt made a mistake in his haste to file a motion on the last day, there does not appear to have been the required intent to deceive, a sine quae non to the adding of a public interest issue grounded in deceit. See Joseph Bahr, 7 F.C.C. Rcd. 2147 (Review Bd. 1992). Apparently, the alleged failure to disclose Commission filings pertains to pending applications for MMDS facilities and the form only required the disclosure of broadcast applications. Brandt ultimately disclosed the MMDS applications in his Integration And Diversification Statement that was filed on February 21, 1992. There is no public interest issue shown that would justify the addition of a new issue. The Commission's strict standard for adding issues based on newly discovered evidence has not been met. Great Lakes Broadcasting, Inc., 6 F.C.C. Rcd. 4331, 4332 (Commission 1991).

Accordingly, IT IS ORDERED that the Motion to Modify and Enlarge Issues filed on April 13, 1992, by Normandy Broadcasting Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge